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By Electronic Filing

The Honorable Thomas P. Griesa
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *US v. Jose Reyes-Rodriguez, Dkt. No. S2 04 CR 664 (TPG)*

Dear Judge Griesa:

Mr. Jose Reyes-Rodriguez is scheduled for sentencing before Your Honor on Tuesday, February 17, 2009 at 11:00 A.M. As his attorney, I submit this letter memorandum pursuant to **Fed.R.Crim.P. 32** to advise Your Honor of matters that will be raised at his sentencing hearing that are pertinent in determining a reasonable sentence in accordance with **18 U.S.C. § 3553(a)** and **U.S. v. Booker, 543 U.S. 220 (2005)**(sentencing courts are no longer mandated to follow the United States Sentencing Guidelines. Rather, the guidelines are but one factor of several that a sentencing court is to consider in determining a reasonable sentence under **18 USC § 3553(a)**).

Mr. Reyes-Rodriguez pleaded guilty, without a plea agreement, to Count One of the above-named indictment charging him with the crime of conspiracy to possess with the intent to distribute one kilogram or more of heroin in violation of **21 USC 846, 841 (b)(1)(A)**. This crime carries a statutory minimum mandatory prison sentence of 10-years to life. At the guilty plea hearing, the government filed a letter with the Court pursuant to **U.S. v. Pimentel, 932 F.2d 1029, 1043 (2d /cir. 1991)** which provides, among other information, a guidelines analysis of Mr. Reyes-Rodriguez criminal responsibility in this conspiracy.¹ Specifically, the letter states that Mr. Reyes-Rodriguez is criminally responsible for a drug quantity of 1 to 3 kilograms, that he warrants a 2-level enhancement for his role in the offense, and that he also warrants a 2-level

¹ See Government letter of August 14, 2007.

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reduction for acceptance of responsibility for his guilty plea.² The letter indicates that his sentencing range is 121-151 months, based on an adjusted offense level of 32 and a Criminal History Category I.³

Background

The indictment alleges a heroin conspiracy that began in March 2004 and ended three months later in July. According to the government, Mr. Reyes-Rodriguez's participation in this conspiracy began sometime in April 2004 after a meeting in the Dominican Republic with an unindicted co-conspirator identified as "Niego" who provided Mr. Reyes-Rodriguez with contact information of the lead defendant in this conspiracy living in New York City, Rafael Beato. Thereafter, on May 11, 2004, Mr. Reyes-Rodriguez traveled to the U.S. eventually making contact with Beato in NYC by the middle of May. They personally met in NYC to discuss the specifics of the conspiracy. After the initial meeting in NYC, Mr. Reyes-Rodriguez and Beato and other conspirators made arrangements to purchase heroin from an overseas-supplier in Cucuta, Colombia, hire individuals to act as "mules" to travel abroad and bring in heroin to the U.S. by ingestion and then to distribute the heroin in NYC. These arrangements led to the importation of heroin on three occasions to the SDNY. Mr. Reyes-Rodriguez was arrested and charged for his role in this offense on February 9, 2006.

It is brought to the Court's attention that Mr. Reyes-Rodriguez has attempted on two occasions to qualify for a relief from the statutory mandatory minimum prison sentence of 10-years under the provisions of **18 USC §3553(f)** and **USSG §5C1.2** known as "safety valve". While Mr. Reyes-Rodriguez continues to maintain his guilt in this conspiracy, he disputes some of the facts of the case. For instance, he insists that at the initial meeting with Niego in the Dominican Republic another individual was present who was introduced to him by Niego, an individual simply identified as "Conde". According to Mr. Reyes-Rodriguez, this individual was a drug importer who had a history of drug distribution with Beato before Mr. Reyes-Rodriguez's participation in the charged conspiracy. This information is brought to the Court's solely for purposes of background and its effect on the Presentence Report's guidelines analysis.

Point I

Presentence Report.

Mr. Reyes-Rodriguez respectfully requests that the Court adopt the following findings of fact and conclusions of law in the PSR:

² Id. p. 2.

³ Id. pp. 2-3.

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- that his Offense Level is 32 based on a drug quantity of 1-3 kilograms (PSR ¶ 19);
- that he does not merit a 2-level increase for role (PSR ¶ 20);
- that, accordingly, the Combined Adjusted Offense Level is 32, not 34 (PSR ¶ 24);
- that Mr. Reyes-Rodriguez deserves a 2-level downward adjustment for Acceptance of Responsibility (PSR ¶ 25);
- Accordingly, the Total Offense level should be 30 (PSR ¶ 28).
- that his Criminal History Category is I (PSR ¶ 31).

This calculates Mr. Reyes-Rodriguez's guideline range, level 30 and CHC I, at 97-121 months. However, since Mr. Reyes Rodriguez does not qualify for a sentence below the minimum mandatory sentence of 10-years, I respectfully request that Your Honor sentence Mr. Reyes-Rodriguez to 120 months, either under the guidelines range listed above or as a non-guidelines sentence as per **18 USC §3553(a)**. After the second proffer session, the government agreed that notwithstanding Mr. Reyes-Rodriguez's inability to qualify for safety valve, it was satisfied that he does not merit a 2-level increase for role.

Point II

Mr. Reyes-Rodriguez's Personal History.

As reported in the PSR, Mr. Reyes-Rodriguez is 52 years old, with no prior criminal history and father of two children living in the United States. PSR ¶¶ 34-41. He is described by his son as a "good father" who was "always there for him" and who encouraged him to "stay in school and do well".

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Conclusion

It is respectfully submitted that in consideration of Mr. Reyes-Rodriguez's personal history and characteristics and his limited time involved in this conspiracy a reasonable sentence for him is a 120 months on Counts One under Dkt. No. S2 04 Cr. 664.

Thank you.

Respectfully submitted,

s/ Richard Palma

Richard Palma

ECF Filed.